

Yacovone, Krista

From: Cardiello, Frank
Sent: Wednesday, April 22, 2015 5:03 PM
To: whatfield@gibbonslaw.com
Cc: Thomas.Carroll@USDOJ.GOV; Gorin, Jonathan
Subject: LCP Chemicals, Inc. Site
Attachments: William S. Hatfield.ltr. (4.22.15).PDF

Dear Mr. Hatfield;

Please see the attached letter.

Sincerely, Frank Cardiello



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

April 22, 2015

William S. Hatfield, Director
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310

Re: LCP Chemicals, Inc. Superfund Site

Dear Mr. Hatfield:

On September 25, 2014, EPA sent correspondence to ISP Environmental Services, Inc. ("IES") (c/o Ashland Chemical) notifying IES that EPA considered it a PRP for the LCP Chemicals, Inc. Superfund Site (the "Site") and inquiring whether IES was interested in "fully financing and performing the remedial design and remedial actions (RD/RA) for the remedy, as selected in the ROD" for the Site. EPA further requested within 30 days, a written "good faith offer" if IES was interested in fully financing or performing the RD/RA. IES requested and EPA granted a 60 day extension for IES to respond to EPA's request for a good faith offer.

In your letter of December 23, 2014, you stated that IES contended "that it bears no liability in connection with the above-referenced site . . . because it never owned or conducted operations at, never arranged for disposal of hazardous substances at, and never transported any hazardous substances to the LCP Site." You further stated, among other things, that "While GAF Corporation (then known as General Aniline & Film Corporation) ("GAF") did own and conduct operations at the LCP Site, see 1999 AOC ¶ 8, IES is not a successor to GAF."

EPA disagrees with IES's contention that it is not a successor to GAF Corporation. In its response to an EPA Request for Information sent pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e), and certified under penalty of law by an IES employee, IES itself admitted that it was the successor to GAF Corporation.¹ Additionally, in 1991, in connection with a reorganization of GAF Chemicals Corporation, GAF Chemicals Corporation sold its assets and assigned its liabilities to several new entities. The assets and liabilities connected to Linden went to ISP 9 Corp., now called ISP Environmental Services. Moreover, IES, assumed GAF's liability for the LCP Site in a 1991 Assumption of Liabilities.

It is EPA's position that IES is indeed a successor to GAF Corporation and a guarantor of GAF's LCP Site liability and is jointly and severally liable for the response costs incurred and to be incurred at the Site. Further, we do not agree that the 2009 Consent Decree and Settlement Agreement in the G-I Holdings bankruptcy had any effect on IES's joint and several liability for

¹ See IES's Response to EPA's 104(e) Request dated June 12, 1998, "ISP Environmental Services, Inc. is the present owner of and successor to the liability of an entity which was known as GAF Corporation when the LCP property was sold in 1972."

response costs at the Site. To the contrary, that document makes it abundantly clear that it has no effect whatsoever on the extent of liability of the "ISP Entities," including IES, for costs at the Site.

Consequently, the IES offer to "pay \$1,000,000 to resolve its liability, if any, for response costs at the LCP Site" does not satisfy EPA's requirement of a good faith offer to fund or conduct the RD/RA at this Site. Accordingly, EPA rejects that offer and will take whatever enforcement actions it deems appropriate.

If IES is prepared to reconsider its position and to make a good faith offer consistent with EPA's September 25, 2014 letter, I urge you to make that offer as soon as possible. We will consider, as appropriate, anything IES chooses to submit, but, of course, we reserve the right to take enforcement action at any time. Please give this matter your immediate attention.

Very truly yours,



Frank X. Cardiello
Assistant Regional Counsel